

**A GUIDE TO  
UNDERSTANDING  
THE CANADIAN HUMAN  
RIGHTS TRIBUNAL**

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# 1. ABOUT THIS GUIDE

This Guide is intended to help the participants in a human rights case understand what happens once a complaint of discrimination is referred to the Canadian Human Rights Tribunal. In this document, the *Canadian Human Rights Act* and the Canadian Human Rights Tribunal are described in plain language to make the law, and the processes and procedures surrounding the law, more accessible to the general public.

PLEASE NOTE: this guide is not a legal document and is for illustrative purposes only. Any reference to the *Canadian Human Rights Act* is not an authoritative interpretation. Nothing in this document should be taken as legal advice.

The Tribunal would like to acknowledge and thank its stakeholders for providing valuable input and feedback on the Tribunal's practices during the 2011 national stakeholder consultations. This Guide incorporates much of the feedback and suggestions received during those consultations.

## *Reference Documents*

This Guide should be read together with, and makes reference to, the following documents:

- *Canadian Human Rights Act*
  - For a copy of the *Canadian Human Rights Act* visit <http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>.
- *Canadian Human Rights Tribunal Rules of Procedure*
  - For a copy of the *Canadian Human Rights Tribunal Rules of Procedure* visit <http://www.chrt-tcdp.gc.ca/NS/about-apos/trp-rpt-eng.asp>

## **2. THE CANADIAN HUMAN RIGHTS ACT**

### **A. Purpose of the *Canadian Human Rights Act***

The purpose of the *Canadian Human Rights Act* is to give effect to the following principle (see s. 2 of the *Act*):

all individuals should have an equal opportunity to make for themselves the lives that they want and to have their needs accommodated, consistent with their duties and obligations as members of society.

The *Act* protects against discriminatory practices, based on one or more of the prohibited grounds of discrimination, which would hinder this principle.

### **B. Prohibited Grounds of Discrimination**

The prohibited grounds of discrimination are (see s. 3 and 25 of the *Act*):

- Race
- National or Ethnic Origin
- Colour
- Religion
- Age
- Sex (includes pregnancy or child-birth)
- Marital Status
- Family Status
- Sexual Orientation
- Disability (includes mental or physical disability, disfigurement and dependence on alcohol or a drug)
- Conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered

## C. Discriminatory Practices

The *Canadian Human Rights Act* protects against the following discriminatory practices if they are based on one or more of the prohibited grounds of discrimination:

- Denying or treating someone unfavourably when offering goods, services, facilities, or accommodation (see s. 5 of the *Act*).
- Denying or treating someone unfavourably when offering occupancy or accommodation in commercial or residential premises (see s. 6 of the *Act*).
- Refusing to employ or continue to employ someone (see s. 7(a) of the *Act*).
- Treating someone unfavourably in the workplace (see s. 7(b) of the *Act*).
- Using a job application form that expresses or implies any limitation, specification or preference (see s. 8(a) of the *Act*).
- Publishing job advertisements or making inquiries in connection with employment that express or imply any limitation, specification or preference (see s. 8(b) of the *Act*).
- Excluding, expelling or suspending a member of an employee organization (for example, a trade union) or unfavourably affecting their status or employment opportunities (see s. 9 of the *Act*).
- Establishing policies or practices, or entering into an agreement, that deprives people of employment opportunities (see s. 10 of the *Act*).
- Paying men and women differently when they are doing work of the same value in the same establishment (see s. 11 of the *Act*).
- Publishing or displaying in public any notice, sign, symbol or emblem that expresses, implies or incites discrimination (see s. 12 of the *Act*).
- Harassing someone, including sexual harassment, in connection with employment or when offering goods, services, facilities or accommodation (see s. 14 of the *Act*).
- Retaliating against a person who has filed a complaint (see s. 14.1 of the *Act*).

## D. Legitimate Defences / Non-Discriminatory Practices

Section 15 of the *Canadian Human Rights Act* provides that there are exceptions to the discriminatory practices. For example, it is not a discriminatory practice if:

- there is a ***bona fide*(good faith) justification** for the denial or differential treatment of someone when offering goods, services, facilities, or accommodation (see s. 15(1)(g) of the *Act*);
- an employer's actions are based on a ***bona fide*(good faith) occupational requirement** (see s. 15(1)(a) of the *Act*);
- employment is refused because an individual has not reached the minimum age, or has reached the maximum age, that applies to that employment by law (see s. 15(1)(b) of the *Act*); or,
- employees are granted special leave or benefits to assist them with pregnancy, child-birth, or to assist them in the care of their children (see s. 15(1)(f) of the *Act*).

### *Bona Fide*(Good Faith) Occupational Requirement or Justification

Under section 15(2) of the *Canadian Human Rights Act*, to be considered a ***bona fide*(good faith) occupational requirement** or ***bona fide*(good faith) justification** it must be established that accommodation of the needs of an individual would impose **undue hardship** on the respondent, considering factors like health, safety and cost.

In practical terms, this means that at a Hearing, a respondent who wants to rely on a *bona fide* defence needs to be able to show—based on the evidence presented—that the rule or standard alleged to be discriminatory:

(1) was adopted for a purpose that is **rationally connected to the performance** of the job or function;

(2) was adopted in **the honest, sincere belief** that it is necessary for the performance of the job or function; and,

(3) was **reasonably** necessary to accomplish the purpose mentioned above, in the sense that accommodating the needs of the complainant would cause the respondent **undue hardship**. In order to prove undue hardship, the respondent may present evidence demonstrating the **health, safety and cost** considerations that such accommodation would impose on the respondent. Ultimately, the Tribunal will decide whether undue hardship has been proven or not.



**Please Note: The *Bona fide justification criteria* continue to be reviewed and explained in the judgments of the Superior Courts and the decisions of the CHRT. The above description is given solely as an introduction to the topic and should not be taken as a complete or definitive statement of the law. In all proceedings, reference should be had to Court judgments and Tribunal decisions where the *bona fide defences* are discussed. See *OTHER RESOURCES*(part 6 of this Guide).**

## E. Remedies

If the Tribunal finds that a complaint of discrimination is established, it can make an order against the person who engaged in the discriminatory practice. The order can include any of the following terms:

- cease the discriminatory practice and take measures to prevent the practice from occurring in the future (see s. 53(2)(a) of the *Act*);
- make available to the victim the rights, opportunities or privileges that were denied (see s. 53(2)(b) of the *Act*);
- compensate the victim for any lost wages as a result of the discrimination (see s. 53(2)(c) of the *Act*);
- compensate the victim for the additional costs of obtaining alternative goods, services, facilities or accommodation as a result of the discrimination (see s. 53(2)(d) of the *Act*);
- compensate the victim up to \$20,000 for any pain and suffering that the victim experienced as a result of the discrimination (see s. 53(2)(e) of the *Act*);
- compensate the victim up to \$20,000 if the discrimination was wilful or reckless(see s. 53(3) of the *Act*); and,
- award interest on an order to pay financial compensation (see s. 53(4) of the *Act*).

## 3. THE CANADIAN HUMAN RIGHTS TRIBUNAL

### A. Role

The Tribunal's role is much like that of a court. It hears evidence and witnesses about complaints of discrimination; decides whether discrimination has occurred; and, if so, determines an appropriate remedy.

### B. Jurisdiction

The Tribunal can only hear complaints of discrimination filed against federally regulated employers and service providers. These include:

- federal government departments, agencies and Crown corporations (including the Canadian Forces and the RCMP)
- chartered banks
- airlines
- television and radio stations
- interprovincial communications and telephone companies
- interprovincial transportation companies
- First Nations governments and some other First Nations organizations

### C. Members

The Tribunal is composed of a full-time Chairperson and Vice-Chairperson, and up to 13 full or part-time Members who are appointed for terms up to five years.

When a case is referred to the Tribunal, the Chairperson assigns either one or, in certain cases, three Members to hear the case.

Short biographies of the Chairperson, Vice-Chairperson and Members are available on the Tribunal's Web site (<http://chrt-tcdp.gc.ca/NS/about-apos/cb-lp-eng.asp>).

## D. Separate & Independent from the Canadian Human Rights Commission

The Tribunal and Commission are separate and independent institutions, each with their own role in the human rights complaint process.

The Canadian Human Rights Commission is the first point of contact for registering a complaint under the *Canadian Human Rights Act*. The Commission has the authority to investigate discrimination complaints and, if it finds the complaint warranted, it refers the case to the Tribunal for a Hearing.

As mentioned above, the Tribunal's role is then to hear witnesses and other evidence about the referred complaint; and, decide whether discrimination has occurred.

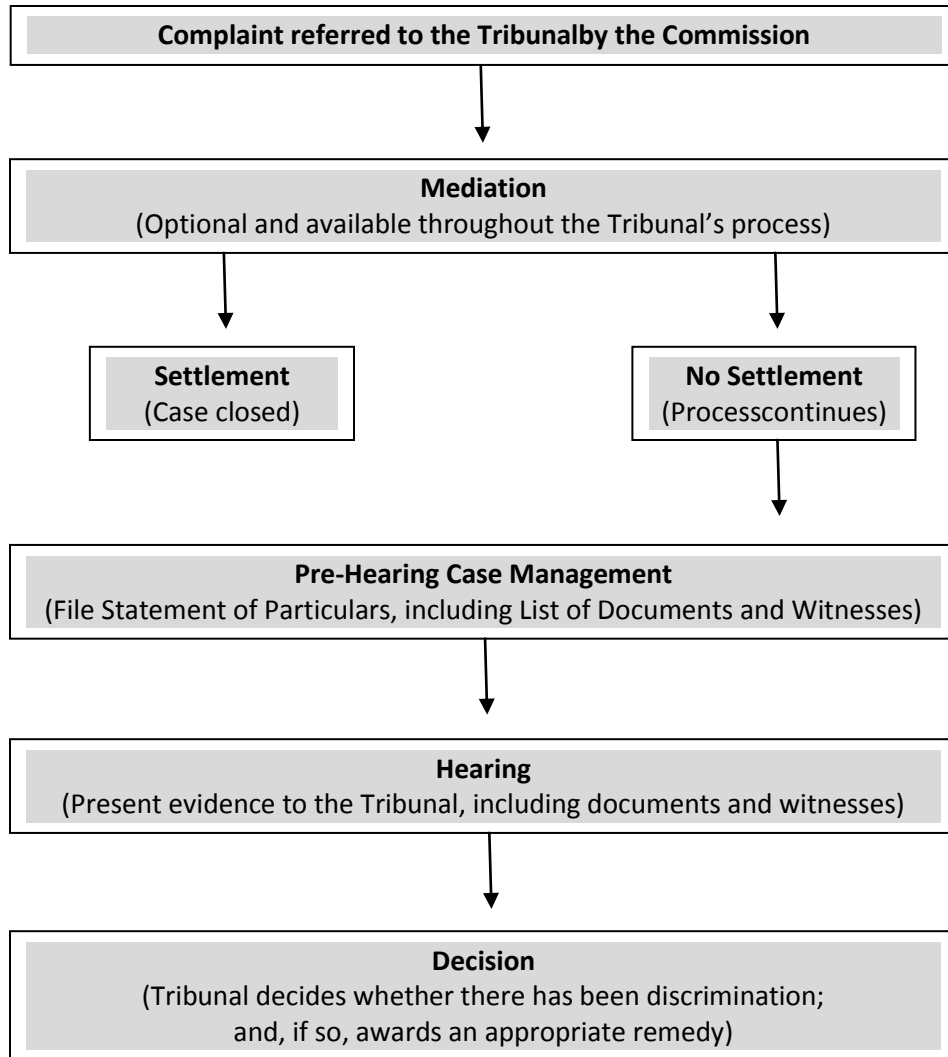
The Commission may, if it decides to participate in the Hearing, present evidence and make arguments before the Tribunal regarding discrimination complaints. The duty of the Commission when it appears before the Tribunal is to represent the public interest. However, the Commission is not required to participate in every Tribunal case.

**Please Note: All documentation and argument a party wishes to present to the Tribunal, including any documents already filed with the Commission, should be filed again as part of the Statement of Particulars (see part 4.5(A) below) and served on the other parties (see part 4.5(E)(I) below).**

- For more information on the Commission visit <http://www.chrc-ccdp.gc.ca/>.

## 4. THE COMPLAINT RESOLUTION PROCESS

### 4.1 Complaint Resolution Process Diagram



## 4.2 Participants in the Complaint Resolution Process

### A. Tribunal Member(s)

The Tribunal Member or Members assigned to the case will be hearing the case and deciding whether discrimination has occurred. Prior to the Hearing, a Tribunal Member (usually a different member than the one assigned to hear the case) may also assist the parties to reach their own solution to their differences through mediation.

### B. Registry Officer

Registry Officers are the point of contact between parties to a case and the Tribunal. A Registry Officer is assigned to each case that comes before the Tribunal. The name, phone number and e-mail address of this Registry Officer will be sent to the parties. He or she is the person to whom the parties should address any questions, including requests for assistance when you are in doubt about the Tribunal's procedures.

**Please Note: Registry Officers do not provide legal advice.**

### C. Parties

Parties are the main participants in a case. They include the Complainant, the Respondent and the Canadian Human Rights Commission (although a party, the Commission does not participate in every Hearing).

#### I. Complainant

The Complainant is the person (or group) alleging that she or he has been discriminated against on one or more of the grounds prohibited by the *Canadian Human Rights Act*.

#### II. Respondent

The Respondent is the person, group, or organization against whom the complaint of discrimination was made.

#### III. Party Representatives

The Complainant or Respondent may represent themselves or may choose to have a lawyer represent them.

In some situations, parties may also choose to be represented by non-lawyers. While parties are welcome to take this approach, it should be noted that non-lawyer representatives do not have the same representative responsibilities and rights as lawyers in the Tribunal Hearing process. In some instances, the law, or the Tribunal

Rules, authorize only lawyers to accomplish certain acts (such as proof of service by a solicitor's certificate under Rule 2(3)). Non-lawyers who choose to represent parties before the Tribunal must do so in full knowledge and acceptance of these limitations.

Whether represented by a lawyer or non-lawyer, the Tribunal expects all party representatives to:

- treat the Members and Registry Officers, as well as the other participants in the inquiry process, with courtesy and respect;
- obtain clear instructions from the party they are representing;
- be well informed of the case and the position of the party they are representing;
- be available for conference calls, Hearings and other events scheduled by the presiding Member;
- comply with any time limits set by the Tribunal, as well as any other directions or orders given by the Tribunal;
- comply with the Tribunal's *Rules of Procedure*;
- fulfill any promises given to the Tribunal or to another party, including promises to keep information confidential; and,
- refrain from any activity that would undermine the proper administration of justice, such as knowingly presenting false or misleading evidence, failing to disclose the existence of relevant documents or dissuading a witness from giving evidence.

#### IV. Canadian Human Rights Commission

When the Commission appears before the Tribunal, it argues the case before the Tribunal on behalf of what it considers to be in the public interest. The Commission's position may support one of the parties' positions, but it does not act as the Complainant's or the Respondent's lawyer.

The Commission does not participate in every Hearing before the Tribunal. When it does, the Commission is represented by a lawyer.

#### V. Other Interested Parties

Sometimes a person or group who is not a party in the case (in other words, not a Complainant, Respondent or the Canadian Human Rights Commission) may be affected by the decision the Tribunal will render, have a very direct interest in the case or be able to provide the Tribunal with evidence that would otherwise not be available.

At the discretion of the Tribunal (see s. 50(1) of the *Act* and Rule 8), this person or group may be allowed to participate in the Hearing as an interested party. They may also be represented by a lawyer.

Examples of interested parties include:

- a group that promotes the rights of people with disabilities, where the complaint is of discrimination on the basis of a disability;
- a union, where the Complainant is a member and has filed a complaint against his or her employer;
- an international non-government organization, where the complaint deals with Canada's international human rights obligations.



## 4.3 Mediation

### A. What is mediation?

Parties to proceedings before the Tribunal have the option of trying to address their differences through voluntary mediation. The goal of the mediation is to try to reach a settlement agreement between the complainant and the respondent. If an agreement is reached at mediation, there will be no Hearing. No one is required to try mediation if they do not want to do so. The mediator is there to facilitate discussions between the parties and ensure that they occur in an atmosphere of respect, honesty and trust. The mediator has no power to impose a solution or agreement. This process allows parties to explore potential solutions to their differences in an informal environment.

### B. Who is the mediator?

The mediator is a Member of the Tribunal with expertise in human rights matters. He or she is a neutral and impartial individual and can assist the parties to a complaint in resolving their differences.

### C. Is mediation confidential?

Discussions taking place during mediation are confidential, whether or not a solution is reached. Before mediation can take place, all those present will be required to sign a document acknowledging that all information exchanged during mediation will be treated as strictly confidential by the parties, their lawyers, and anyone else in attendance, and cannot be used as evidence if the complaint proceeds to a Hearing.

The Tribunal's Mediation Agreement can be found at Appendix 7.1 of this Guide.

Unless the parties otherwise agree, a Member of the Tribunal who mediates a particular case will not be assigned to conduct the Hearing of the case. In addition, nothing said in the course of mediation will be communicated to the Tribunal Member or Members subsequently assigned to hear the case (at the Hearing).

However, in appropriate cases, and where the parties agree, the Tribunal Member who mediates the complaint may also conduct the Hearing. This process is known as mediation-adjudication. Mediation-adjudication is discussed in the next section of this Guide.

### D. How does mediation work?

At the mediation, the mediator will usually start by meeting with all of the parties and, if they have chosen to be represented, their lawyer, in a joint session. Although in some circumstances, the mediator may choose to start by meeting separately with each of the parties. In the initial session, the mediator will explain the mediation process and give each party an opportunity to explain his or her views about the issues in dispute.

After the initial joint session, the mediator may ask the parties to retreat into separate rooms and speak with them individually. This allows the mediator and the parties to explore more fully the needs and interests underlying their stated positions, and to think about a range of potential options for a solution.

The mediator may conduct additional joint sessions to promote further discussions between the parties, and/or may continue to work with the parties in private sessions. Where appropriate and taking into account the expectations and wishes of the parties, the mediator may provide the parties with an assessment of the strength and weaknesses of the parties' positions should they go to Hearing, based upon the information that has been provided to the mediator.

#### E. When does mediation take place?

The Tribunal offers mediation from the beginning of its process. If all parties agree to mediation, the Tribunal will request mediation briefs (discussed below) from each party. Upon receipt of the mediation briefs, a date mutually agreed to by all parties will be scheduled for the mediation.

If mediation is declined or is unsuccessful in resolving the complaint, it is still available to the parties throughout the Tribunal's process, up until the end of the Tribunal's Hearing.

#### F. Where will mediation take place?

The mediation will take place at a location convenient to all parties. In some circumstances, particularly in cases where parties are in different geographic locations, the mediation may even be conducted over the phone so as to render the process more accessible and to reduce the costs of travel.

#### G. How long will mediation last?

A day is ordinarily set aside for mediation. Additional time may be provided in appropriate cases.

#### H. If you choose mediation, what happens next?

Prior to the mediation, the mediator or the Registry Officer may contact the parties to discuss matters such as who is going to be present at the mediation and what information should be provided to the mediator in advance of the mediation. Unless the mediator specifically requests additional information, each party will be required to send the mediator a mediation brief (discussed below).

#### I. What is a mediation brief?

A mediation brief is a document that outlines the party's views on the facts giving rise to the complaint and details any proposed solutions or remedies being sought. Mediation briefs are confidential and cannot be used as evidence if the complaint proceeds to a Hearing. The briefs do not form part of the official record before the Tribunal.

For Complainants, the mediation brief should include:

- a statement of the facts giving rise to the complaint (as discussed in part 4.5(A)(I) of this Guide); and,
- a detailed outline of the remedies being sought (as discussed in part 4.5(A)(III) of this Guide), including documents that support any monetary claims being made (for example: tax returns, receipts, etc.).

For Respondents, the mediation brief should include:

- its version of the facts giving rise to the complaint (as discussed in part 4.5(A)(I) of this Guide);
- its position on the legal issues raised in the case, if applicable (as discussed in part 4.5(A)(II) of this Guide); and,
- its position on the remedies being sought by the Complainant (as discussed in part 4.5(A)(III) of this Guide).

A well prepared mediation brief will help the mediator facilitate discussions between the parties about solutions to the case. It also ensures all parties are committed and focused on resolving the case. If mediation briefs are incomplete or are not focused on reasonable solutions to the case, the mediator may ask the parties for further information or may cancel the mediation altogether. Part of the goal of mediation is to save time and money for the parties and the Tribunal. Delaying or cancelling mediation would defeat these goals.

## J. Who should attend the mediation?

For mediation to work, it is essential that the people attending the mediation session have the necessary authority to resolve or settle the case, either on their own behalf, or on behalf of the institutions they represent.

It is up to each party to choose whether to bring a lawyer to the mediation session. Parties may also wish, and are encouraged, to be accompanied by someone to support them during the mediation, be it a relative, advisor or friend.

A party may request a person or group who is not a party in the case, but who is nevertheless affected by the parties' differences, to attend mediation in order to share their own experience, bring in a different perspective on the issues and contribute to a solution to the differences. If all parties agree, this person or group may also be allowed to attend the mediation.

Where the Canadian Human Rights Commission is participating in the Hearing, it will usually have a lawyer present at the mediation. The lawyer for the Canadian Human Rights Commission does not represent the Complainant, but rather represents the public interest. In situations where the Canadian Human Rights Commission is not participating in the Hearing, it may send a mediation practitioner to assist with the mediation.

#### K. What happens if an agreement is reached?

Any agreement reached at mediation must be recorded in writing and signed by the parties or their lawyers.

If a party does not have a lawyer and an agreement is reached at mediation, the agreement will not become final for seven days after the mediation. This will allow the party to think things over and to get legal advice on the agreement, if they wish to do so.

Furthermore, the *Canadian Human Rights Act* requires that any agreement reached by the parties prior to the start of the Tribunal Hearing must be approved by the Canadian Human Rights Commission (see s. 48 of the *Act*). Accordingly, any agreement reached at mediation is subject to the approval of the Canadian Human Rights Commission once signed by all parties. The Commission approval is usually obtained within 4-6 weeks of the signed mediation agreement.

If an agreement is reached at the mediation session, and is approved by the Canadian Human Rights Commission, the Canadian Human Rights Tribunal will be notified and the Tribunal proceedings will be discontinued.

#### L. What happens if an agreement is not reached?

If it is not possible to resolve the case at mediation, an effort should be made during the mediation session to determine if there are any issues that can be resolved, or if agreement can be reached on any of the facts. This can help to narrow the issues and potentially shorten the time required for the Hearing.

Where no agreement is reached through mediation, the case will proceed to Hearing.

However, the parties may agree to return to mediation throughout the Tribunal's process, up until the end of the Tribunal's Hearing.

## 4.4 Mediation-Adjudication (“MED-ADJ”)

Under the Tribunal’s standard mediation procedure, if the case does not resolve through mediation, the Tribunal Member who conducted the mediation will not be the Tribunal Member assigned for the formal Tribunal Hearing and decision-making on the case (“adjudication”).

This is because, in the course of trying to assist parties to resolve their differences through mediation, the Member may hear privileged or confidential information about each party or person’s case. At mediation, parties commonly share this kind of information with the Member in the course of discussions. At adjudication, however, the parties have the right to keep privileged information confidential; it cannot be used as evidence, and it should not be shared with the Member conducting the Hearing.

The MED-ADJ procedure works differently. Under this procedure, if the case does not resolve through mediation, the Member who facilitated the mediation also conducts the Hearing and adjudication of the matter. He or she will proceed to manage the case through the pre-hearing stage and act as the adjudicator, hearing evidence, issuing rulings and ultimately deciding if the complaint is founded or not.

Because of the concerns detailed above regarding the disclosure of privileged and confidential information, the Tribunal requires special consent from the parties to participate in MED-ADJ, separate and apart from the initial consent required to participate in our standard mediation procedure. Therefore, while this depends on the circumstances of each case, MED-ADJ is usually only conducted with parties represented by a lawyer (counsel) or where the party has indicated that they have received independent legal advice before making the decision.

As long as the parties’ special consent is obtained, MED-ADJ can result in a significantly easier adjudication. Through the mediation process, a Member acquires a strong familiarity with the case. This can ease the transition to case-management, and can assist the Member to understand the evidence and arguments presented during adjudication. If the parties agree, the Member can also revert back into mediation with the parties, before or during the Hearing.

Parties interested in utilizing MED-ADJ should inform the mediator assigned to their case at the conclusion of the mediation or soon thereafter.

The Tribunal’s *Consent and Request for MED-ADJ* form can be found as Appendix 7.2 to this Guide.

## **4.5 Pre-Hearing Case Management**

Pre-hearing case management is the process by which the Tribunal assists the parties in preparing for the Hearing of a complaint.

The case management process involves filing documents with the Tribunal outlining the facts, legal issues and remedies sought with regard to a complaint. It also involves identifying documents and witnesses that will be used at the Hearing.

During this process, the Member of the Tribunal who will be hearing the case will discuss with the parties any outstanding issues requiring the Tribunal's intervention before the Hearing. The Member will usually confer with the parties through a case management conference call. During these calls, the Member may encourage the parties to make admissions and reach agreements on various issues, and can establish schedules and deadlines for the parties to provide the Tribunal with information. Ultimately, the goal of pre-hearing case management is to help the parties organize their evidence and reduce the time required for the Hearing itself.

## A. Statement of Particulars

A Statement of Particulars is a description of the case a party intends to make before the Tribunal (see Rule 6). It outlines how that party intends on proving their case at the Hearing. It involves five (5) elements:

1. Facts
2. Legal Issues
3. Remedy
4. List of documents
5. List of witnesses

In preparing a Statement of Particulars it may be helpful to consult the *Complaint Form* and/or the *Investigation Report* prepared by the Canadian Human Rights Commission.

## I. Facts

### *Complainant*

In this section, the Complainant should describe their version of the events that prompted the complaint, including the date(s), location(s), and who was involved.

It is usually easiest to understand facts when they are told in chronological order. That is, to start the story with the first incident that occurred and end with the last.

Here is an example of a statement of facts on behalf of a Complainant:

#### **FACTS**

1. My name is Sofia Li and I worked as a full-time truck driver for ABC Trucking Inc. from January 1, 2001 to February 1, 2012.
2. ABC is a trucking company based in Saskatoon that transports wheat from Saskatoon to various locations across Saskatchewan and throughout Manitoba and Alberta.
3. In 2012, ABC adopted a fitness test for truck drivers that had to be passed in order to maintain employment.
4. The test required that truck drivers weigh less than 200 lbs. be able to run 5km, and lift up to 50lbs.
5. I had my fitness test on January 31, 2012 at a gym in Saskatoon.
6. On February 1, 2012, I was told by Pat Smith, the President of ABC, that I did not pass my fitness test and was being laid-off.
7. Aside from the fitness test, throughout my employment with ABC I have performed my work well and had a great relationship with my colleagues and clients.



## *Respondent*

In responding to the Complainant's version of events, the Respondent should tell the Tribunal what facts it agrees with; what facts it disagrees with and why; and, provide any additional information it may have.

Here is an example of how ABC Trucking Inc. might respond to Sofia Li's Facts.

### **FACTS**

1. ABC agrees with the facts stated by the Complainant at paragraphs 1 to 4 of her Statement of Particulars.
2. With regard to what occurred on February 1, 2012, Pat Smith, the President of ABC, along with Casey Taylor, the Complainant's Supervisor, had a meeting with the Complainant to discuss the results of her fitness test. The Complainant was informed that she did not pass the fitness test, but would be given an opportunity to retake it. Despite being informed that passing the fitness test was a condition of her employment, the Complainant stated she did not want to retake the test. Therefore, the Complainant was informed that she was laid-off.
3. The Complainant did perform her work well; however, she had been disciplined in the past for using vulgar language with colleagues and clients.

## *Agreed Statement of Facts*

An Agreed Statement of Facts is a list of facts about the case that all parties agree on. For example, the parties may agree that the Complainant was fired on a particular date, or would have been earning a certain amount of money if he or she had been promoted. Documents that are not in dispute (for example, a copy of an employment application form) may also be submitted with the Agreed Statement of Facts, which is signed by all parties.

An Agreed Statement of Facts saves time during the Hearing because the parties don't have to present evidence to support these facts. However, an Agreed Statement of Facts is not mandatory.

To determine whether there are any facts that are not in dispute, each party will have to summarize the facts as they understand them and then contact the other party or parties to determine which, if any, of these facts they will agree to accept.

The Agreed Statement of Facts can be submitted at any time up to and including the start of the Hearing.

## II. Legal Issues

### *Complainant*

The Complainant in a human rights complaint must establish that a prohibited ground of discrimination was a factor in the practice they are complaining about (as described in parts 2(B) and 2(C) of this Guide). In this section, the Complainant must explain why they believe that the treatment they received was connected to one or more prohibited grounds of discrimination.

The Complainant should also describe how the treatment they received affected them. For example, the Complainant may have had hurt feelings or felt a loss of dignity; lost money or income; their emotional or mental health may have suffered; or, they may have lost an employment opportunity.

Where the Complainant is claiming that they were retaliated against because they filed a human rights complaint, the Complainant must establish a connection between the retaliatory actions and the original complaint. In this section, the Complainant must explain why they believe that the retaliatory treatment they received was connected to the filing of a complaint.

Continuing with the ABC Trucking Inc. example described above, here's how the Complainant, Sofia Li, might describe the Legal Issues of her case.

### **LEGAL ISSUES**

8. Under section 7 of the *Canadian Human Rights Act*, I believe ABC Trucking treated me differently and refused to continue my employment because of my sex (woman).
9. The fitness test did not distinguish between male and female test subjects.
10. Of the 5 female trucks drivers at ABC, only 1 has passed the fitness test.
11. For the 13 years prior to the fitness test coming into force, I performed my work well, without risk to myself, my colleagues or the public.
12. The requirements of the fitness test are not necessary for either men or women to perform the work of a truck driver satisfactorily for ABC.
13. Due to physiological differences, most women would not pass the fitness test.
14. Therefore, the fitness test has a negative effect on women at ABC Trucking.
15. In my case, due to not passing the fitness test, I lost my job with ABC Trucking.
16. After serving the company for 13 years, I was let go for something I believe is unrelated to the performance of the duties of a truck driver. This caused me to suffer from depression for the three months following my layoff.

17. I was only able to start working again, and found another trucking job, on June 1, 2012

### *Respondent*

In responding to a discrimination complaint, the Respondent may want to show its actions were not discriminatory; or, may want to rely upon a statutory defence (as described in part 2(D) of this Guide). If the Respondent wishes to rely on one of the statutory defences, it should indicate which of those defences it is relying on and explain why it applies.

Here is an example of how ABC Trucking Inc. might respond to the Legal Issues raised by Sofia Li's complaint.

#### **LEGAL ISSUES**

4. While the Respondent agrees that the Complainant was laid-off because she did not pass the fitness test, it disagrees that doing so was discriminatory.
5. Under section 15(1)(a) of the *Canadian Human Rights Act*, ABC Trucking's fitness test was based on a *bona fide* occupational requirement.
6. The fitness test was developed in response to a Report that recommended that only physically fit employees be assigned as truck drivers for safety reasons.
7. The fitness test was developed by identifying the essential components of truck driving, measuring the physiological demands of those components, selecting fitness tests to measure those demands and, finally, assessing the validity of those tests.
8. Under section 15(2) of the *Canadian Human Rights Act*, it would cause undue hardship for ABC to accommodate employees who fail the fitness test because: (1) it would put the health and safety of the employee at risk; (2) it would put the health and safety of colleagues and the public at risk; and, (3) as a small business, it would cost too much to keep the Complainant employed in another area of the organization, while hiring a new employee as a truck driver.

### III. Remedy

#### *Complainant*

The Complainant may ask for a variety of remedies under the *Canadian Human Rights Act*(as described in part 2(E) of this Guide). In this section, the Complainant should outline the remedies he or she seeks.

Please note:**the Tribunal cannot award legal costs in favour of any party.**

For monetary awards, it is important that the Complainant provide supporting information to justify the amount claimed. The following information should be included, if applicable:

#### **Wage Loss**

- dates of employment and unemployment (start & end dates for each period);
- all wages and/or money received and/or claimed (e.g. salary, EI, disability, pension, etc.);
- employment status during the period(s) in question: part-time or full-time;
- amount of employment insurance or disability benefits received;
- any other amounts claimed or relevant to the claim;
- provide supporting documents(T4s, Notice of Assessments, pay stubs, income tax returns).

#### **Additional costs incurred**

- what were the expenses incurred?
- explain the nature of the additional costs of obtaining alternative goods, services, facilities or accommodation;
- provide any supporting documents (e.g. receipts, invoices, etc.).

#### **Pain and suffering**

- what amount is claimed for compensation? This amount cannot exceed \$20,000.
- explain the nature of the pain and suffering experienced;
- provide any supporting documents.

## Special compensation

- what amount is claimed for special compensation (if it is being alleged that the discrimination was wilful or reckless)? This amount cannot exceed \$20,000.
- explain why it is believed that the person is engaging or has engaged in the discriminatory practice wilfully or recklessly;
- provide any supporting documents.

## Interest

- if the Tribunal orders interest, it is usually simple interest calculated on a yearly basis at the Bank Rate (monthly series) established by the Bank of Canada (see link in Chapter 6: Other Resources); and, accrues from the date on which the discriminatory practice occurred, until the date of payment of the award of compensation (see Rule 9(12));
- if the Complainant believes another rate and/or period is appropriate, please explain why;
- provide any supporting documents.

Here is an example of the type of Remedy Sofia Li might request in her complaint against ABC Trucking Inc.

### REMEDY

18. Under section 53(2)(a) of the *Canadian Human Rights Act*, I ask that the Tribunal order ABC Trucking to cease applying its fitness test and/or develop a new fitness test that does not have a discriminatory effect on women.
19. Under section 53(2)(c), I ask that ABC Trucking compensate me for the wages I lost from being unemployed between February 2, 2012 and May 31, 2012. I was working full-time, earning a salary of \$50,000 a year before I was laid off. I collected EI during the period I was laid off in the amount of \$2000. Therefore, I've calculated my lost wages to be \$10,500. Supporting financial documents are found in my list of documents.
20. My lay off from ABC Trucking was hurtful given my commitment to the company for 13 years. It sent me into a depression for three months, for which I had to visit my doctor and receive medication. The only thing that brought me out of it was getting my new job. On this basis, I believe an award of \$10,000 for the pain and suffering I experienced would be appropriate under section 53(2)(e). Relevant medical documents are listed in my list of documents.

*Respondent*

In most cases, the Respondent will deny that any discrimination has taken place and, therefore, will respond to the Complainant's request for remedies by saying they should receive nothing.

However, when a Respondent denies that discrimination has taken place, it would be prudent for the Respondent to also provide its alternative position on the remedies sought by the Complainant. In the situation where the complaint is substantiated, this will provide the Tribunal with a fair and informed basis on which to craft appropriate remedies. Without providing an alternative argument, the Respondent may create a situation where the Tribunal awards remedies based only on the submissions of the Complainant.

## **REMEDY**

9. The Respondent denies that any discrimination has occurred, therefore, it believes the complaint should be dismissed.
10. In the event the Tribunal finds the complaint substantiated, the following is the Respondent's position on the remedies sought by the Complainant.
11. If ABC's fitness test is found to be discriminatory, the company requires a minimum of one year to explore possible solutions.
12. ABC Trucking shuts down for two weeks in March. This shutdown period should be taken into consideration in calculating the Complainant's lost wages. In our calculation, \$10,500 minus two weeks wages would be \$8416.67.
13. Given that the Complainant's hurt feelings and depression only lasted for a relatively short period of time, the Respondent submits that an award of \$5000 would be a more appropriate award for her alleged pain and suffering.

#### IV. List of Documents (“Disclosure”)

In this section of the Statement of Particulars, each party lists the documents in their possession that relate to a fact, issue or remedy in the case. This includes any documents that relate to a fact, issue or remedy identified by the other parties. This process is called “disclosure”.

If a document is not disclosed, a party may not be allowed to introduce it into evidence at the Hearing (see Rule 9(3)(c)). Thus, all documents a party intends to rely upon need to be disclosed to the other parties before the Hearing.

There is also an ongoing obligation throughout the Tribunal’s process to disclose documents when a party discovers new documents or when new facts, issues or remedies are raised (see Rule 6(5)).

##### *Privileged Documents*

If any documents are “privileged” they should be listed in a separate list (see Rule 6(1)(d)). Privileged information includes communications between lawyers and their clients. Documents prepared and communications occurring in anticipation of litigation before the Tribunal may also be privileged. Finally, written or oral communications occurring within the context of settlement discussions (including the Tribunal’s mediation process) are also regarded as privileged.

##### *Production of Documents*

Each document on the list of documents should be provided to the other parties. The Member will usually set a deadline for each party to do this.

**DO NOT** send copies of the documents to the Tribunal. The Tribunal only receives the **list** of documents as part of each party’s Statement of Particulars (see Rule 6(4)).

*Example*

Here's an example of what Sofia Li's List of Documents might look like in her complaint against ABC Trucking.

<b>LIST OF DOCUMENTS</b>			
<b>Non-Privilege Documents</b>			
<b>Document #</b>	<b>Description</b>	<b>Date</b>	
1	Employment Agreement between Sofia Li and ABC Trucking Inc.	January 1, 2001	
2	Sofia Li's Fitness Test results	January 31, 2012	
3	Sofia Li's Record of Employment from ABC Trucking Inc.	February 1, 2012	
4	Sofia Li's last pay stub from ABC Trucking Inc.	January 31, 2012	
5	Sofia Li's statement of employment insurance for 2012	January 1, 2013	
6	Clinical notes of Dr. West regarding treatment for depression of Sofia Li	February 15, 2012	
7	Prescription for anti-depressants from Dr. West for Sofia Li	February 15, 2012	
<b>Privileged Documents</b>			
<b>Document #</b>	<b>Description</b>	<b>Date</b>	<b>Privilege</b>
1	Letter from Mr. Hall, counsel for Sofia Li, to Sofia Li Re: CHRT complaint	June 1, 2012	Solicitor-client privilege
2	Legal opinion from Mr. Hall, counsel for Sofia Li, to Sofia Li Re: CHRT complaint	July 1, 2012	Litigation privilege
3	Complainant's Mediation brief	May 30, 2012	Mediation privilege



## V. List of Witnesses

In this section, each party lists the witnesses they would like to call to testify at the Hearing. Along with the names of the witnesses, the party should also provide a summary of what this witness will testify about.

If a witness is not included in the List of Witnesses, a party may not be permitted to call the witness at the Hearing (see Rule 9(3)(b)).

### *Example*

Here's an example of what Sofia Li's List of Witnesses might look like in her complaint against ABC Trucking.

<b>LIST OF WITNESSES</b>	
<b>NAME</b>	<b>SUMMARY OF ANTICIPATED TESTIMONY</b>
Sofia Li	Will testify as to her experience of being a truck driver for 13 years at ABC Trucking; her version of the events leading to the complaint; and, the resulting impacts on her and other women at ABC Trucking Inc.
Penelope Tucker	One of five other women truck drivers at ABC at the time the fitness test was implemented. She was also laid off as a result of not passing the fitness test. Will testify as to her experience at ABC Trucking.
Dr. West	Will testify to the effects the layoff had on the Complainant's mental health.

### *Expert Witnesses*

A witness who gives opinion evidence in his or her area of expertise is considered an expert witness. For example, an expert witness could be a doctor who testifies about a medical condition or an accountant who gives evidence as to lost revenue.

If you are unsure about whether one of your witnesses needs to be called as an "expert witness", you can request a Tribunal direction or ruling on the issue by contacting the Registry Officer.

For each expert witness, you must serve on the other parties and file with the Tribunal a report that (see Rule 6(3)):

- sets out the expert's name, address and credentials;
- sets out the substance of the expert's proposed testimony; and,
- is signed by the expert

This document, called an expert witness report, offers a detailed explanation for the opinion or conclusion that the witness is being called upon to provide and lays out the facts that are being relied upon.

## B. Sample Statements of Particulars

Sample: Complainant (*Jamie Larose v. Company XYZ*)

Tribunal File No.: T1234/5678

### CANADIAN HUMAN RIGHTS TRIBUNAL

BETWEEN:

**Jamie Larose**

Complainant

and

**CANADIA HUMAN RIGHTS COMMISSION**

Commission

and

**COMPANY XYZ**

Respondent

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### STATEMENT OF PARTICULARS OF THE COMPLAINANT

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#### Facts

1. I am paralyzed from the waist down and get around through the use of a wheelchair.
2. On January 2, 2012, I visited the Respondent's offices to receive the services they offer.
3. Upon arrival at the Respondent's office building, I discovered that there is a flight of stairs that impede my access to the building.
4. There is no wheelchair ramp or other way for me to access the Respondent's office building.
5. On January 3, 2012, I called the Respondent to see how I might be able to access their services, considering I could not access their office building. A Customer Service Representative told me that Company XYZ's services could only be accessed in person at their office building. As a result, I was told that Company XYZ could not provide me with the services I requested.

## Legal Issues

6. I allege that the Respondent discriminated against me based on my disability, under section 5 of the *Canadian Human Rights Act* (the *Act*), by denying me the services it offers.
7. Company XYZ offers their services to the general public. However, because their services can only be accessed in person, and because their office building does not provide for wheelchair access, I was denied those services because of my disability.
8. Being denied services from Company XYZ hurt my dignity as a person and made me feel as though I was not an equal with other people who do not require the use of a wheelchair.
9. I had to go to another company to receive the services I requested from the Respondent. That other company offers the same services, but at a much higher price. It cost me an additional \$1,000 to get the same services I requested from the Respondent.

## Remedy

10. Under section 53(2)(a) of the *Act*, I ask that the Tribunal order Company XYZ to cease its discrimination against wheelchair disabled people and install a wheelchair ramp at the front of its office building.
11. Under section 53(2)(d), I ask that Company XYZ compensate me for the cost of obtaining alternative services from another company in the amount of \$1,000. The invoice for obtaining these alternative services is included in the List of Documents below.
12. Under section 53(2)(e), I also request compensation for the pain and suffering I experienced as a result of the discriminatory practice. The Respondent's actions infringed my dignity and made me feel as though I was not an equal with other people who do not require the use of a wheelchair. On this basis, I believe compensation in the amount of \$5,000 would be appropriate.

## List of Documents

Non-Privileged Documents		
Document #	Description	Date
1	Printout from Company XYZ's website describing the services that they offer.	January 2, 2012
2	Pictures of Company XYZ's office building.	January 2, 2012
3	Recording of telephone conversation with Company's XYZ's Customer Service Representative	January 3, 2012
4	Transcript of recording of telephone	January 3, 2012

	conversation with Company's XYZ's Customer Service Representative	
5	Invoice from other company for services requested from Company XYZ	January 4, 2012

**Privileged Documents**

<b>Document #</b>	<b>Description</b>	<b>Date</b>	<b>Privilege</b>
1	Letter from Ms. Law, counsel for Jamie Larose, to Jamie Larose Re: CHRT complaint	June 1, 2012	Solicitor-client privilege
2	Legal opinion from Ms. Law, counsel for Jamie Larose, to Jamie Larose Re: CHRT complaint	July 1, 2012	Litigation privilege

**List of Witnesses**

<b>NAME</b>	<b>SUMMARY OF ANTICIPATED TESTIMONY</b>
Jamie Larose	Will testify as to my experience in dealing with Company XYZ; my version of the events leading to the complaint; and, the resulting impacts on me.
Kerry Tafton	Friend of the Complainant. Will testify as to the effects Company XYZ's denial of service had on the Complainant

**CANADIAN HUMAN RIGHTS TRIBUNAL**

BETWEEN:

**Jamie Larose**

Complainant

and

**CANADIA HUMAN RIGHTS COMMISSION**

Commission

and

**COMPANY XYZ**

Respondent

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**STATEMENT OF PARTICULARS OF THE RESPONDENT**

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**Facts**

1. Company XYZ has offered its services for over 20 years and prides itself on offering superior customer service and accommodating its customers to the best of its abilities.
2. The Respondent does not deny the facts as stated by the Complainant at paragraphs 1-4 of his Statement of Particulars.
3. On January 3, 2012, the Complainant called the Respondent and spoke to Customer Service Representative Casey Martin. The Complainant was quite agitated on the phone and verbally abusive to Casey. Casey asked the Complainant to calm down and to stop being abusive. The Complainant continued his tirade, at which point, Casey told him that the call was being ended.
4. Company XYZ did not hear from the Complainant again until this complaint was filed.

**Legal Issues**

5. Company XYZ submits that it did not deny the Complainant its services.

6. While its services are usually only offered in person, at its office building, Company XYZ has provided accommodation to disabled people in the past who could not access the building. Some accommodation measures include providing the services over the phone or sending a representative to meet with the client. Company XYZ has a *Customer Accommodation Policy* in this regard.
7. Due to the Complainant's abusive behaviour with Casey Martin, Company XYZ was not able to explore these accommodation measures with the Complainant. Company XYZ has a *Customer Service Representative Policy* that states that such representatives can hang up on individuals who are verbally abusive.
8. Under section 15(1)(g) of the *Canadian Human Rights Act*, Company XYZ also asserts that it has a *bona fide* justification for not having wheelchair access to its office building.
9. Company XYZ is a small business and cannot afford to install a wheelchair ramp.
10. In 2011, Company XYZ explored the option of installing a wheelchair ramp. A report prepared in this regard indicated that the cost would seriously impact the financial situation of the company. As a result, and pursuant to section 15(2) of the *Act*, it would cause undue hardship to Company XYZ to install a wheelchair ramp.

## **Remedy**

11. The Respondent denies that any discrimination has occurred, therefore, it believes the complaint should be dismissed.
12. In the event the Tribunal finds the complaint substantiated, the following is the Respondent's position on the remedies sought by the Complainant.
13. Forcing Company XYZ to install a wheelchair ramp would seriously impact the financial situation of the company. Therefore, this remedy is inappropriate and would cause the Respondent undue hardship.
14. The other company that the Complainant consulted offers a variety of additional services that Company XYZ does not offer. Examining the invoice produced by the Complainant, it is clear that the additional \$1,000 the Complainant spent was due to premium services not offered by the Respondent.
15. Given the Complainant's behaviour with Casey Martin, the Respondent submits that his alleged pain and suffering was caused by his own actions. Had the Complainant been willing to engage the Respondent in a dialogue regarding the accommodation of his disability, Company XYZ may have been able to resolve the issue. As a result, the Respondent submits that there should be no compensation for pain and suffering.

**List of Documents**

<b>Non-Privileged Documents</b>		
<b>Document #</b>	<b>Description</b>	<b>Date</b>
1	Company XYZ's <i>Customer Accommodation Policy</i>	August 1, 2011
2	Recording of telephone conversation between Jamie Larose and Casey Martin	January 3, 2012
3	Transcript of recording of telephone conversation between Jamie Larose and Casey Martin	January 3, 2012
4	Company XYZ's <i>Customer Service Representative Policy</i>	March 11, 2008
5	Report Re installing wheelchair ramp at Company XYZ's office building	February 22, 2011
6	Company's XYZ's financial reports for the years 2011-2012.	March 31, 2011-2012

<b>Privileged Documents</b>			
<b>Document #</b>	<b>Description</b>	<b>Date</b>	<b>Privilege</b>
1	Letter from Mr. Coco, counsel for Company XYZ, to Terry Ford, President of Company XYZ, Re: CHRT complaint	June 1, 2012	Solicitor-client privilege
2	Legal opinion from Mr. Coco, counsel for Company XYZ, to Terry Ford, President of Company XYZ, Re: CHRT complaint	July 1, 2012	Litigation privilege

**List of Witnesses**

<b>NAME</b>	<b>SUMMARY OF ANTICIPATED TESTIMONY</b>
Casey Martin	Customer Service Representative of Company XYZ. Will testify about the phone conversation with Jamie Larose and the <i>Customer Service Representative Policy</i>
Terry Ford	President of Company XYZ. Will testify as to the services offered by Company XYZ; its <i>Customer Accommodation Policy</i> ; the Report regarding the installation of a wheelchair ramp at its office building; and, the company's financial status.



## C. Reply

After receiving the Respondent's Statement of Particulars, the Complainant and the Commission have the opportunity to file a Reply.

In a Reply, the Complainant and the Commission can raise issues to counter the Respondent's Statement of Particulars. It is an opportunity to address the arguments made by the Respondent.

The reply should only address those issues that were raised in the Respondent's Statement of Particulars, and not simply repeat what was stated in the Complainant's Statement of Particulars.

Here is an example of how Sofia Li might reply to ABC Trucking Inc's Statement of Particulars.

### REPLY

1. In reply to the Respondent's assertion that the fitness test is a *bona fide* occupational requirement, I would say that in my thirteen years as a truck driver my level of fitness had no effect on my ability to perform my job, which the Respondent admits I performed well. I would add that I am unaware of any other trucking company that requires a fitness test as a condition of employment.
2. Furthermore, I was never told or warned that my level of fitness posed a health and/or safety risk to me, my colleagues or the public.
3. While the Respondent says it would have cost too much to keep me employed in another area of the organization, it is my understanding that Pat Smith's son, who was a truck driver but who also failed the fitness test, was accommodated in another position in the organization.

Here is an example of how Jamie Larose might reply to Company XYZ's Statement of Particulars

### REPLY

1. In reply to the Respondent's assertion that I was verbally abusive to a Customer Service Representative of the Respondent on January 3, 2014, I completely deny this assertion. In fact, my words and tone were completely courteous and respectful of the Representative.
2. If anything, it was Casey Martin who was disrespectful to me. I calmly tried to explain to her that Company XYZ's facilities were inaccessible to me, but she did not take any of my concerns seriously and without warning hung up on me.
3. I know that there are grants available from the Government that would allow Company XYZ to be completely refunded for the cost of building a ramp to make their building accessible.



## D. Motions

Before or during the Hearing, a party may want the Tribunal to rule on an issue that is separate from the merits of the complaint. A party does this by filing a written request with the Tribunal, including the reason(s) why they are making the request. This request is called a Motion (see Rule 3).

Some of the more common Motions before the Tribunal are requests for: additional disclosure from the other party; amending the complaint; adjourning the Tribunal's proceedings; adding a party to the proceedings; and, consolidating the Hearing of two complaints.

Once a Motion has been made, the Tribunal will issue instructions on how it will deal with it. Each party will be given an opportunity to present arguments on the Motion, whether in writing, through a telephone conference call or holding a Hearing. After all parties have put forward their arguments, the Tribunal will issue a ruling on the Motion.

Here is an example of a Notice of Motion for an extension of time:

[Use Heading as formatted in sample Statement of Particulars]

### NOTICE OF MOTION

Take notice that the Complainant brings a motion in the above case, to be heard [Choose one] (1) in an oral hearing [or] (2) based on written submissions.

The motion is for an order extending the date for filing the Complainant/Respondent's Statement of Particulars, from August 15, 2014 to August 29, 2014.

The grounds for the motion are as follows:

1. On August 13, 2014, the Complainant received a large number of documents further to an *Access to Information Act* request which are relevant to the complaint and will affect the Complainant's statement of fact and statement of issues.
2. The Complainant's counsel will require additional time to review these documents and assess their impact on the complainant's case.
3. The Complainant did not expect the *Access to Information Act* request to only be answered on August, 13, 2014. The actual information request had been made in January 2014, and was expected much earlier.
4. The Complainant has acted with all due diligence in seeking out the material needed to draft its Statement of Particulars.

5. The extension of the filing date will not cause unfairness to Respondent. In the event that it does, the Complainant would consent to the Respondent's being granted a corresponding two week extension in the filing of its Statement of Particulars.
6. In support of its motion, the Complainant relies upon s. 50(1) of the *CHRA*, which requires the Tribunal to give all parties a "full and ample opportunity to present evidence and make representations" and rule 3 of the *Canadian Human Rights Tribunal Rules of Procedure*, which sets out the procedure for bringing motions.

Here is an example of a Response to a Notice of Motion for an extension of time:

[Use Heading as formatted in sample Statement of Particulars]

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**RESPONDENT'S SUBMISSION  
TO THE COMPLAINANT'S NOTICE OF MOTION SEEKING AN EXTENSION OF  
TIME**

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1. The Respondent objects to the Complainant's motion for an order granting an extension of time to file the Complainant's Statement of Particulars.
2. The Respondent notes that the Complainant could have made its *Access to Information Act* request earlier, that is to say, as soon as the complaint was referred to the Tribunal for inquiry in November 2013.
3. The Respondent affirms that the Complainant has not demonstrated how or why documents obtained by access to information are relevant to the current case.
4. The Respondent suspects that many of the "large number of documents" may already be in the Complainant's possession. To the extent this is true, they add nothing new to the Complainant's case.
5. The Respondent relies on s. 48.9(1) of the *CHRA* which requires that proceedings before the Tribunal be conducted as informally and expeditiously as the requirements of natural justice and the rules of procedure allow. Continued delay makes it harder to hold a fair hearing.
6. In the event the motion is granted in spite of the Respondent's submissions, the Respondent would request a corresponding two week extension in the time for filing the Respondent's Statement of Particulars.

## **E. Service and Filing: How to Deliver Documents to the Other Parties and the Tribunal**

### **I. What is “Service”? What does it mean to “Serve” a document?**

Serving a document is providing a copy of the document to the other party.

A Statement of Particulars and/or a Motion must be served on all parties.

In most cases, documents may be served by electronic mail.

Documents may also be served in one of the following ways (see Rule 2(2)):

- by fax if the document is 20 pages or less;
- by ordinary or registered mail, or by courier;
- in person; or
- by bailiff or process server.

In the event that a dispute arises as to whether a party received service of a document, you will need to have proof that the document was served (see Rule 2(3)). This proof could be:

- a letter from the person who served the document confirming that the document was delivered;
- your sworn testimony before the Tribunal;
- an affidavit of service (in Quebec, a certificate of service);
- a solicitor's certificate;
- a fax printout;
- a registered mail receipt; and/or,
- an admission or acknowledgment from the party who was served the document.

### **II. What is “Filing”? What does it mean to “File” a document?**

Filing a document means providing the Tribunal with a copy of the document.

A Statement of Particulars and/or a Motion must be filed with the Tribunal.

In most cases, the Tribunal will request that parties file documents electronically by electronic mail to the Registry Officer.

A document can also be filed by delivering (in person or by courier), mailing or faxing it to the Registry Officer (see Rule 2(4)).

## 4.6 Hearing

A Hearing is where the parties to the complaint are given the opportunity to present their evidence, witnesses and argument to the Tribunal (see Rule 9). The objective of the Hearing is to allow the Tribunal to hear the merits of the case so it can decide whether discrimination has occurred. If you are the person alleging discrimination, the Hearing is your chance to establish why you believe you were discriminated against. If you are the person accused of discrimination, the Hearing is your chance to rebut the complaint and/or establish why the discrimination was justified.

### *How long will the Hearing last?*

The length of the Hearing depends on the complexity of the case and the number of witnesses. The average length of a Hearing before the Tribunal is 5 days. Usually, the Hearing is held from 9:30 a.m. to 5:00 p.m. with a break in the morning, a break for lunch and a break in the afternoon.

### *Where will the Hearing be held?*

The Tribunal generally holds Hearings in a location that minimizes, to the extent possible, the travel costs of parties and witnesses. The location is often a public building such as a hotel or conference centre. In larger cities, it is not uncommon for Hearings to be held in a federal courthouse and, in Ottawa, there are dedicated Tribunal Hearing rooms that are used.

## A. Preparing for the Hearing

### I. Witnesses

#### *Subpoena(s)*

It is possible that a witness does not wish to appear before the Tribunal, or needs a legal document to justify his or her absence from work. A subpoena is a legal document that orders a person to appear at the Hearing as a witness. It may also require that person to bring to the Hearing any documents or items that he or she owns or has control over that relate to the complaint.

A subpoena can be requested from the Tribunal. If the Tribunal grants the request to subpoena a witness, it will provide a signed subpoena, which the party must then arrange to have served on the witness.

Witnesses are also entitled to be paid for their time before the Tribunal by the party who calls them to the Hearing (see s. 50(6) of the *Act*). The Registry Officer assigned to the case will provide important information on paying witness fees when requesting a subpoena.

It is not necessary to serve a subpoena and pay witness fees if the witness is willing and able to appear without a subpoena. In many cases, witnesses appear voluntarily, without a subpoena or the payment of fees.

#### *Oath or affirmation*

A witness testifying before the Tribunal is asked to take an oath or make an affirmation.

An oath is a solemn appeal to God, or a revered person, or object such as a holy book, in witness of a promise to speak the truth.

A solemn affirmation is the equivalent to an oath for those witnesses who do not have religious beliefs, or do not wish to refer to them.

Prior to the Hearing, a party should ask each of their witnesses whether they wish to take an oath or affirmation before providing their testimony. If a witness wishes to take an oath on a holy book, or object, they are asked to bring the holy book or object of their choosing.

At the beginning of the Hearing, each party will be asked to complete a Record of Appearance indicating the type of oath or affirmation each of their witnesses wishes to take before they testify.

## II. Copies of Documents & Book of Authorities

Prior to the Hearing, the Tribunal will send a letter to the parties explaining the Tribunal's procedures on the filing of Exhibits and Books of Authorities at the Hearing.

An exhibit is any document, picture or object put forward as evidence at the Hearing. Not every document that was disclosed will necessarily become an exhibit at the Hearing. At the disclosure stage, parties are showing each other all the documents in their possession that are potentially relevant to the case. At the Hearing, parties introduce as exhibits only those documents they believe are necessary to support their case. In so doing, parties can introduce as exhibits documents that were disclosed by the opposing party.

However, the Tribunal cannot receive as exhibits documents that are privileged. Furthermore, if a document was not previously disclosed by one of the parties, the Tribunal may refuse to receive that document as an exhibit (see Rule 9(3)(c)).

A Book of Authorities contains copies of the case law and legislation a party will use to argue its case before the Tribunal. The sections of case law and/or legislation that support the party's argument should be highlighted in the Book of Authorities.

The Tribunal's letter will ask each party to prepare a set number of copies of all the exhibits and case law they plan to file with the Tribunal. Usually, the Tribunal asks for six (6) copies of each exhibit and Book of Authorities (one for the Tribunal Member; one for the official record; one for the witness; one for the Commission; one for the opposing party; and, one for the party filing the document for use during the Hearing).

## III. Accommodation of special needs

The Tribunal is committed to making the Hearing process as accessible as possible for all participants: the parties, witnesses, counsel, other representatives and observers. Anyone who requires accommodation of special needs for the Hearing should notify the Registry Officer assigned to the case as early as possible.

While the Tribunal tries to respect the privacy of individuals seeking accommodation of special needs, where those accommodations could affect the rights of other participants to the Hearing, those other participants may have to be notified of the request and given an opportunity to speak to it. Ultimately, the decision on the request for special needs accommodation will be made by the Member presiding over the Hearing.



## B. At the Hearing

### I. Who is there and where do they sit?

Several people may be present at the Hearing. They may include the Complainant, the Respondent, their respective lawyers, the lawyer for the Canadian Human Rights Commission, any other interested parties, and the witnesses that will be testifying (however, see Rule 9(9), 9(10) and 9(11)).

Also present will be the Registry Officer and the Member or Members of the Tribunal who will hear the case.

The Hearing is also open to the public and anything said in the Hearing is public. Therefore, journalists and members of the public may also be present in the Hearing room. In certain exceptional circumstances however, the Tribunal may decide to put into place measures to ensure the confidentiality of the Hearing (see s. 52(1) of the *Act*).

A typical Hearing room will have the following layout:

Tribunal Member(s)		
Registry Officer		Witness (could be on the other side of the Registry Officer, depending on the room's configuration)
Complainant (and lawyer)	Commission (lawyer)	Respondent (and lawyer)
Extra seating (for interested parties, assistants to lawyers, etc.)		
Public Seating		

## II. Record of appearance

Upon arrival at the Hearing, the Registry Officer will ask each party to complete a Record of Appearance. On the form, a party must state their name and address, the witnesses they will call and whether they will testify under oath or affirmation.

## III. Introductions

Once all the parties have filled in and returned their Record of Appearance forms, the Registry Officer will call the Hearing to order, introduce the Tribunal Member or Members hearing the case, and ask the parties to introduce themselves.

The normal order for introductions is: the Complainant, the Commission, the Respondent and any interested parties. The parties and their lawyers each take turns standing up and introducing themselves.

For example, the Complainant in a case may introduce themselves as follows: "Good morning, my name is Sofia Li and I am the Complainant in this matter".

## IV. Opening statements

After introductions, all parties are asked if they would like to make an Opening Statement. An Opening Statement is a summary of what that party intends to prove during the Hearing. In an Opening Statement, a party will describe the facts they intend to prove and the evidence they will present to prove these facts. Opening Statements may also briefly refer to the main legal principles that a party feels are relevant to the case.

The Complainant usually goes first, followed by the Canadian Human Rights Commission (if participating) and then the Respondent. Any of the parties can decide not to give an Opening Statement. Or, a party may decide to give their Opening Statement later, when it is their turn to present their case.

## V. Witness testimony

When opening statements are completed, the Tribunal Member will invite the Complainant to call its first witness. When the Complainant has finished calling all of its witnesses and presenting their evidence, it is then followed by the Commission, should it be participating in the inquiry.

In certain circumstances, the Commission may call its witnesses before the Complainant.

The Complainant and the Commission call all their witnesses and provide all of their evidence before the Respondent is invited to call his or her witnesses and make his or her case.

Each party is given an opportunity to ask each witness questions. This process is called "Examination". There are three different kinds of Examination: Direct examination, Cross-examination and Re-examination.

### *Questioning your witnesses & putting forward documents ("Direct Examination")*

Asking questions of a witness you called to the Hearing is referred to as direct examination or examination in chief. The purpose of direct examination is to provide the Tribunal with evidence of the facts that make up your case.

Direct examination is also the time to put forward documents in support of your case. Generally, each document must be identified by a witness before they will be accepted into evidence by the Tribunal.

In some cases, the Complainant or Respondent may not be represented by a lawyer, but will want to provide witness testimony. In that situation, a party can testify without having someone ask them questions. They simply present their testimony from the witness box and state the facts as they understand them. While the party is giving evidence on the stand, they are not expected at the same time to provide argument. Later on, once all witnesses have been heard from, they will have an opportunity to convince the Tribunal that there is, based on their interpretation of the facts and law, a particular conclusion that should be reached (see Final Argument section below).

At the direct examination stage, a party is required to put all their intended evidence they are planning to present before the Tribunal. This should include evidence in support of their relief sought. It is improper to deliberately hold back known evidence for the purposes of attempting to introduce it later in the Hearing.

### *Questioning the other party's witnesses ("Cross-examination")*

Asking questions of a witness who was called by an opposing party, after that party has questioned that witness, is referred to as cross-examination. There are two purposes for cross-examination: to cast doubt on the truth or accuracy of what the witness has said and to flush out additional information that will support your side of the story. Generally,

all witnesses who present evidence under direct examination are subject to cross-examination by the other side.

During direct examination by the opposing party of the opposing party's witnesses, it is advisable to make notes of the points you would like to ask those witnesses in cross-examination. It is not advisable to make the cross-examination simply repeat the direct examination.

#### *Re-questioning your witness ("Re-examination")*

Asking additional questions of the witness you called, after the other parties have cross-examined that witness, is referred to as re-examination. Re-examination is usually allowed only to clarify or explain new issues that came up during cross-examination.

#### VI. Reply

After the Respondent's witnesses have been examined, cross-examined and re-examined, the Commission and Complainant may be given an opportunity to present evidence in reply to any new evidence introduced by the Respondent that was not covered during the Complainant's or Commission's direct evidence.

Reply evidence cannot relate to a new issue, and must relate to an issue raised in the Respondent's case. Also, reply evidence cannot be presented without the express permission of the Tribunal.

#### VII. Final argument

When all of the evidence has been presented, each party is given an opportunity to present a Final Argument. This is a chance for each party to explain what facts they believe have been proven by the evidence, and why. This is also a chance for each party to explain why they feel the evidence as a whole either supports a finding of discrimination or not within the meaning of the *Canadian Human Rights Act*. Final Argument is not the time for introducing additional evidence; rather, during Final Argument parties refer to evidence that was presented earlier.

The Final Arguments of the Canadian Human Rights Commission and the Complainant also include a description of the remedy they seek, together with a recap of the evidence that supports this request.

The Respondent's Final Argument summarizes his or her answer to the complaint. It revisits evidence he or she feels tends to support its view of the facts, and explains why those facts do not support the conclusion that discrimination occurred or why they fail to demonstrate that the requested remedy is appropriate.

Final Argument also gives each party an opportunity to refer to the *Canadian Human Rights Act* or any other statute, as well as case law in support of their case (Book of Authorities).

## 4.7 Decision

Following a Hearing, the Tribunal will issue a decision explaining its reasons for finding that the complaint has or has not been substantiated. If a complaint is substantiated, the decision may also order a remedy to rectify the discrimination.

The Tribunal tries to release a decision within four months of hearing the complaint, but more complex cases may take longer.

## 4.8 Judicial Review

If a party disagrees with the Tribunal's decision, it can ask the Federal Court of Canada to review it. This is done by filing an application for judicial review with the Federal Court of Canada within 30 days after the time the decision was first communicated by the Tribunal to the parties.

- For more information on the Federal Court of Canada visit [http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc\\_cf\\_en/Index](http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index)

## 5. FOR MORE INFORMATION

For more information about the Tribunal, visit the website at [www.chrt-tcdp.gc.ca](http://www.chrt-tcdp.gc.ca) or contact the Tribunal at:

Canadian Human Rights Tribunal  
160 Elgin Street, 11th Floor  
Ottawa, Ontario  
K1A 1J4

Telephone: (613) 995-1707

TTY: (613) 947-1070

Fax: (613) 995-3484

E-mail: [registrar-greffier@chrt-tcdp.gc.ca](mailto:registrar-greffier@chrt-tcdp.gc.ca)

## 6. OTHER RESOURCES

- For a glossary defining commonly used Tribunal terms please visit: <http://chrt-tcdp.gc.ca/NS/about-apropos/g-eng.asp>
- To search or browse the full text of Tribunal decisions please visit: <http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/en/nav.do>
- To search or browse the full text of court decisions and other provincial human rights tribunal decisions please visit: <http://www.canlii.org/>
- To search and browse legislation please visit: <http://laws.justice.gc.ca/eng/>
- To access the Bank Rate (monthly series) please visit: <http://www.bankofcanada.ca/rates/interest-rates/canadian-interest-rates>  
(See above: 4.5 A. III – Interest)

# 7. APPENDECIES

## 7.1. Mediation Agreement

### CANADIAN HUMAN RIGHTS TRIBUNAL (“CHRT”) MEDIATION AGREEMENT

**BETWEEN:**

**NAME OF COMPLAINANT(S)**

**Complainant(s)**

-and-

**CANADIAN HUMAN RIGHTS COMMISSION**

**Commission**

-and-

**NAME OF RESPONDENT(S)**

**Respondent(s)**

CHRT FILE(s): TXXXX/XXXX, TXXXX/XXXX

The Complainant(s), Respondent(s), Commission, their representatives, and any non-representative participants (the “Party” or “Parties”) wish to resolve matters in dispute between them through mediation with the assistance of a CHRT Member (the “Mediator”).

**In pursuing mediation, the Parties agree:**

1. Good Faith, Courtesy and Respect

(a) The Parties will make a sincere attempt to discuss all issues fairly and in good.



(b) The Parties will treat each other and the Mediator and all other Parties with courtesy and respect.

## 2. Role of the Mediator

(a) The Mediator will act as an impartial, third-party facilitator and assist the Parties towards reaching a voluntary solution to the dispute. The Mediator is not providing legal advice and has no power to impose a settlement.

(b) The Mediator may meet separately with the Parties during the mediation.

(c) The Mediator may assess the relative strengths and weaknesses of the positions advanced by the Parties and may provide the Parties with a non-binding opinion as to the probable outcome of the inquiry.

(d) Should the Parties not reach a settlement and the matter proceed to a hearing, the Mediator will not be assigned to hear the complaint without the Parties' request and consent.

## 3. Authority to Settle

(a) The primary responsibility for resolving the outstanding issues in the above-noted complaint rests with the Parties.

(b) The Parties to the mediation will have the authority to make a settlement agreement.

## 4. Confidentiality

(a) All information acquired during mediation is intended by the Parties to be without prejudice and shall be treated as strictly confidential by the Parties.

(b) Written or verbal communications made in the course of mediation will not be used as evidence in any CHRT or other legal proceedings unless the existence or scope of a settlement is in dispute.

(c) The Mediator will not communicate any information about the mediation to the adjudicator(s).

(d) The Parties may not compel the disclosure, in any CHRT or other legal proceedings, of any documents received or prepared by the Mediator for settlement purposes.

(e) The Parties may not compel the mediator to testify regarding the mediation in any CHRT or other legal proceedings.

## 5. Settlement

- (a) Should the Parties reach a settlement, a generic summary of this settlement, as described in the text below, may be referred to by the CHRT for statistical reporting purposes:

*A complaint alleging a discriminatory practice within the meaning of section(s) \_\_\_\_\_ of the Canadian Human Rights Act, based on the prohibited ground(s) of \_\_\_\_\_ was settled. This complaint may have otherwise involved a \_\_\_\_\_ week Hearing.*

- (b) Pursuant to section 48(1) of the *Canadian Human Rights Act*, if a settlement is reached before the commencement of a Hearing before the CHRT, the terms of the settlement shall be referred to the Commission for approval or rejection.
- (c) Where a Complainant or Respondent participates in the mediation without a lawyer and agrees to a settlement, that person will benefit from a seven calendar day 'cooling off period' during which they may withdraw their agreement to the settlement.

6. Ending the Mediation

- (a) The Parties or the Mediator may end the mediation at any time for any reason.

7. No Liability

- (a) The Parties will not bring any claim against the CHRT, its Members, including the Mediator, any employees of the Administrative Tribunal Support Service of Canada, or Her Majesty in right of Canada, for any act or omission in connection with the Mediation.

8. Acknowledgement

- (a) The Parties acknowledge that they have read and understand the terms contained in this Mediation Agreement.

9. Signature

- (a) By signing below, the Parties agree to proceed with mediation based on the terms contained in this Mediation Agreement.

At: \_\_\_\_\_, \_\_\_\_\_  
(City) (Province)

Date: \_\_\_/\_\_\_/\_\_\_  
(dd/mm/yyyy)

Print Name	Signature	Party/Role*
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## 7.2. Consent and Request for Mediation-Adjudication

### CONSENT AND REQUEST FOR MEDIATION-ADJUDICATION (“MED-ADJ”)

TO: Registrar, Canadian Human Rights Tribunal  
160 Elgin Street, 11th Floor, Ottawa, Ontario, K1A1J4  
[registrar-greffier@chrt-tcdp.gc.ca](mailto:registrar-greffier@chrt-tcdp.gc.ca)

Canadian Human Rights Tribunal (CHRT) file(s): \_\_\_\_\_

CHRT Member: \_\_\_\_\_

The parties to the above CHRT file attempted to resolve matters in dispute between them through mediation. Although the parties were not able to resolve their dispute, they request that the CHRT Member who mediated this file be assigned to adjudicate the matter.

The basis for the present request is that the parties believe the CHRT Member's prior involvement in mediation will make adjudication more efficient and expeditious, while allowing for a thorough consideration of all the issues in dispute.

In requesting MED-ADJ, the parties understand and agree to the following terms:

#### 1. Difference between mediation and adjudication

Mediation is an informal dispute resolution process where a mediator helps facilitate discussions between the parties in the hopes of reaching a settlement.

Adjudication is the formal legal process of deciding a case. Each party has the opportunity during a hearing to present their evidence and argument to an impartial third person, called an adjudicator (or CHRT Member), who then analyzes the evidence and argument and decides the matter.

In the CHRT MED-ADJ process, the CHRT Member who conducted the mediation becomes the adjudicator. As the process continues, and if the parties so wish, it is also possible for the CHRT Member to switch back to mediation, and then if need be, switch to adjudication again.

#### 2. Confidential and/or privileged information disclosed during mediation

The parties are aware that confidential and/or privileged information may have been disclosed to the CHRT Member during mediation that they may not want brought forward during adjudication. While the disclosure of this information to the CHRT Member during mediation will not affect his or her ability to adjudicate this file fairly and impartially, the parties understand that the CHRT Member will, nonetheless, have knowledge of this information during adjudication (the hearing).

Any decision made by the CHRT Member concerning this file will be based on the evidence and argument presented during adjudication. The CHRT Member will not consider statements made or documents provided during the mediation when adjudicating and deciding this matter, unless they are entered as evidence during adjudication.

**3. Parties not represented by a lawyer**

Where a party is not represented by a lawyer, a Certificate of Independent Legal Advice (ILA) regarding this request for MED-ADJ, signed by a lawyer, must be appended to this form.

**4. No request for CHRT Member to resign from adjudication**

Once the parties request and consent to MED-ADJ, and the Chairperson of the Tribunal assigns the CHRT Member to hear the case, they cannot request that the CHRT Member resign from adjudication based upon anything that occurred during the mediation.

**5. Fully informed and voluntary agreement to MED-ADJ**

By signing below, each party fully understands the MED-ADJ process and its implications as detailed in this request form. The parties also acknowledge that their agreement as recorded in this request form was given voluntarily, without pressure or coercion from any other person, including the other parties or the CHRT Member.

**6. Signature**

After considering all of the above, the parties request that the CHRT Member mentioned above be assigned to conduct the adjudication in the present CHRT file.

Complainant(s)			
Print Name/Organization	Signature	Date	Representative
			<input type="checkbox"/> Lawyer Name: Firm:  <input type="checkbox"/> No Lawyer, Certificate of ILA attached
			<input type="checkbox"/> Lawyer Name: Firm:  <input type="checkbox"/> No Lawyer, Certificate of ILA attached
			<input type="checkbox"/> Lawyer

			Name: Firm:  <input type="checkbox"/> No Lawyer, Certificate of ILA attached
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Respondent(s)			
Print Name/Organization	Signature	Date	Representative
			<input type="checkbox"/> Lawyer Name: Firm:  <input type="checkbox"/> No Lawyer, Certificate of ILA attached
			<input type="checkbox"/> Lawyer Name: Firm:  <input type="checkbox"/> No Lawyer, Certificate of ILA attached
			<input type="checkbox"/> Lawyer Name: Firm:  <input type="checkbox"/> No Lawyer, Certificate of ILA attached

Canadian Human Rights Commission		
Print Name	Signature	Date